U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TESSIE L. ROSS-ELSAID and U.S. POSTAL SERVICE,
POST OFFICE, Columbus, OH

Docket No. 00-2359; Submitted on the Record;
Issued July 2, 2001

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant reached maximum medical improvement on November 23, 1999.

In this case, the Office accepted appellant's claim for bilateral carpal tunnel syndrome and paid appropriate wage-loss compensation intermittently.

In a medical report dated May 20, 1998, Dr. Michael E. Ruff, appellant's treating Board-certified orthopedic surgeon, found that appellant had a 10 percent impairment for each hand and had reached maximum medical improvement on that day.

On March 23, 1999 appellant filed a claim for wage loss from March 12 through 17, 1999, which the Office accepted as a recurrence of disability.

In a report dated June 4, 1999, Dr. John W. Cunningham, Board-certified in preventive medicine, stated that he had examined appellant that day and recommended an impairment rating of 10 percent for the left upper extremity and a 20 percent impairment for the right upper extremity. He did not indicate a date of maximum medical improvement.

In a report dated November 23, 1999, Dr. Charles J. Kistler, Jr., appellant's treating osteopath, stated that "medical improvement obviously has been obtained" and recommended an impairment rating of 14 percent for her left hand and 16 percent for her right hand.

In a report dated January 13, 2000, the Office medical adviser reviewed appellant's medical records and determined that she had a 10 percent impairment of the left upper extremity and a 20 percent impairment of the right upper extremity. He noted that appellant's date of maximum medical improvement was July 1, 1998.

In a decision dated January 31, 2000, the Office awarded appellant a schedule award for a 10 percent impairment of the left upper extremity and 20 percent impairment of the right upper

extremity. The Office noted that period of award ran from November 23, 1999 to September 9, 2001. In a memorandum to the file dated January 27, 2000 the claims examiner stated that November 23, 1999 was the date of maximum medical improvement because that was the date that Dr. Kistler reported an impairment rating. The claims examiner also stated that appellant "had an accepted recurrence on March 12, 1999, which was after the date of maximum medical improvement chosen by the Office medical adviser."

By letter dated February 7, 2000, appellant requested reconsideration. By merit decision dated March 20, 2000, the Office denied appellant's request for reconsideration.

The Board finds that appellant reached maximum medical improvement no later than November 23, 1999.

It is a well-established principle that a claimant is not entitled to dual workers' compensation benefits for the same injury.[1] A claimant may not receive compensation for temporary total disability or compensation based on loss of wage-earning capacity and a schedule award covering the same period of time.[2] As *Larson*[3] points out, generally, "the schedule award is added to the allowance for temporary total disability."[4] However, *Larson* makes clear that both benefits are not to be paid concurrently. In comparing schedule benefits with other benefits provided under workers' compensation laws for an injury, *Larson* notes: "It goes without saying that, when the statute provides parallel remedies for the same injury, it is not intended that claimant should have both."[5] Under respect to the Federal Employees' Compensation Act,[6] the Board has held: "An employee cannot [con]currently receive compensation under a schedule award and compensation for disability for work."[7]

It is also well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the employment injury.[8] In this case, Dr. Kistler, appellant's treating osteopath, stated on November 23, 1999 that "medical improvement obviously has been obtained." Dr. Kistler's opinion was based upon a thorough and accurate knowledge of appellant's history of injury and treatment, and objective clinical findings on examination. The medical record thus clearly demonstrates that appellant reached maximum medical improvement no later than November 23, 1999.

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[1] *Benjamin Swain*, 39 ECAB 448 (1988).

[2] *See Eugenia L. Smith*, 41 ECAB 409, 412 (1990); *Robert T. Leonard*, 34 ECAB 1687, 1690 (1983); *Helen R. Plimpton*, 34 ECAB 829, 897-98 (1983).

[3] *Larson, The Law of Workers' Compensation* § 58.15.

[4] *Id.*

[5] *Id.* at § 58.20, n. 42.

[6] 5 U.S.C. §§ 8101-8193.

[7] *Joseph R. Waples*, 44 ECAB 936 (1993); *Andrew B. Poe*, 27 ECAB 510, 512 (1976).

[8] *Yolanda Librera*, 37 ECAB 388 (1986); *Daniel Dunmire*, 36 ECAB 249 (1984).

On appeal appellant states that the date of maximum medical improvement was May 20, 1998 as noted by Dr. Ruff in his report dated the same day. However, the Office accepted her claim for wage-loss compensation from March 12 to 17, 1999, which would have been covered under appellant's schedule award if the date of maximum medical improvement had been May 20, 1998. The subsequent award would have run for 93 weeks beginning on May 20, 1998 and would have included March 12 to 17, 1999.

The March 20 and January 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
July 2, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member